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Note by the Secretariat**

Addendum

Discussion paper contributed by the indigenous peoples major Group***

Summary

In the present paper we seek to address the key concerns and recommendations that indigenous peoples have expressed regarding the work, mandate and future of the United Nations Forum on Forests.[1] We seek to draw together stated concerns and recommendations that have been voiced by indigenous peoples throughout the processes of the Intergovernmental Panel on Forests (IPF), the Intergovernmental Forum on Forests (IFF) and the latest incarnation of the United Nations Forum on Forests regarding the relevance and impact of these forums on the lives and future of the world's indigenous peoples.

At the fifth session of the United Nations Forum on Forests, there are two key agenda items, an assessment of the work done in the past by the Forum, and the possible future forms of an international arrangement or arrangements on forests. To assist the United Nations Forum on Forests in its decisions, the present paper addresses two key points:

(a) The implementation of the proposals for action relevant to indigenous peoples over the course of the Forum's work;

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*** Prepared by the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests.

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(b) Indigenous peoples' requirements for any possible future arrangement if it is to answer the Forum's mandate, as a body in the United Nations system, to uphold human rights commitments of States and preserve the world's forests.

The present paper takes the position that indigenous peoples are unique in their relationship to the forests on which they depend and towards which they hold a relationship of care and management. They have lived in harmony and nurtured their forest and biodiversity through their skills, practices, knowledge and a holistic understanding of the environment, which has been evolved and integrated into their culture and way of life. Nowadays, their forests and lives are under threat from so-called mega-development projects, mining, logging concessions and biopiracy activities. The paper also holds that indigenous peoples are not merely stakeholders in a discussion about future forms of forest agreements and management principles, but rather are rights holders by virtue of the unique position described. Significant concerns exist about the underlying assumptions with which the United Nations Forum on Forests and States involved have been acting, and we would like to bring those concerns to the fore here. The Convention on Biological Diversity has recognized that the "full and effective participation of indigenous and local communities" is essential to the sustainable and just management of the world's biodiversity. This principle must be upheld in all bodies within the United Nations system, to ensure that best practice is shared between United Nations agencies and bodies.

It is with this background in place that the present paper will review some of the past work of the United Nations Forum on Forests, and provide recommendations for its future work, or the arrangement that replaces it.

[1] The present paper is not to be considered representative of the perspectives of the world's 300 million indigenous peoples, for they are diverse and representative of a truly global array of social, environmental, economic and cultural circumstances. Indeed, although it seeks to address their concerns, the paper is not representative of the 50 million persons living in the tropical rainforests.

Contents

		Paragraphs	*Page*
I.	Introduction	1–4	3
II.	Indigenous assessment of the implementation of relevant proposals for action	5–29	4
III.	Gaps in the existing proposals for action	30–32	10
IV.	Priority areas for action	33–45	11
V.	Indigenous priorities for any future arrangement(s) on forests	46–50	17
VI.	Recommendations on achievable goals and targets	51	18
VII.	Conclusions and recommendations	52–53	20

I. Introduction

1. The organization that has prepared the present discussion paper, the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (IAITPTF), was founded in Penang, Malaysia in 1992. IAITPTF is the only intercontinental indigenous peoples' organization in the world and incorporates indigenous peoples' organizations from more than 47 countries within nine regions of the world: West Africa, Central Africa, East Africa, Central America, South America, South Asia, South-East Asia, Bahasa and the Pacific. IAITPTF has actively participated in international forestry policy debates since the Rio Summit in 1992. In 1996, the International Alliance co-organized the International Meeting of Indigenous and Other Forest-Dependent Peoples on the Management, Conservation and Sustainable Development of all types of Forests, held in Leticia, Colombia under the auspices of the Intergovernmental Panel on Forests (IPF). The outcomes of the Leticia meeting provided crucial input to international processes on forests, which were enhanced by the Leticia Declaration, which included a number of indigenous peoples' proposals for action.

2. Indigenous peoples' proposals for action were partially incorporated into the proposals for action that were drafted and adopted as a "global consensus" on forest policy and forest management during the course of the deliberations in IPF and the subsequent Intergovernmental Forum on Forests (IFF). The United Nations Forum on Forests was established with the mandate to facilitate and promote the implementation of these IPF/IFF proposals for action. However, to date there have been few independent reviews of the extent to which Governments in different parts of the world have fulfilled their commitments. While paper commitments — reports to the United Nations Forum on Forests and the Convention on Biological Diversity, and production of national strategy documents, such as national forest plans, national forest action programmes and national biodiversity strategy and action plans, can easily be identified, information on effective implementation, both in the detail of law and policy and particularly in actions on the ground, is far more difficult to obtain.

3. It was therefore decided that IAITPTF would, in collaboration with the Forest Peoples Programme and with support from the secretariat of the United Nations Forum on Forests, commission a range of case studies to allow review of implementation by indigenous peoples and support organizations. These case studies were presented and discussed at the Expert Meeting on Traditional Forest-Related Knowledge and the Implementation of Related International Commitments held in San José, Costa Rica, from 6 to 10 December 2004. In order to establish an environment in which globally applicable recommendations could potentially be drafted, participants for the Meeting were drawn from countries and peoples throughout the world. Participant selection also focused on having a range of major international agencies relevant to forest policy, relevant regional and international non-governmental organizations, government representatives and United Nations bodies relevant to the topic. The total number of participants was 161, with 104 indigenous peoples' representatives, 9 United Nations and international agencies' representatives, 26 non-governmental organizations representatives, 15 governmental representatives and 5 representatives of the scientific community. The Meeting resulted in detailed recommendations to the United Nations Forum on Forests and to

a range of other relevant bodies, and in the Corobici Declaration. Both documents are available in English, French and Spanish.[1]

4. Although initially planned as a process of review and monitoring, it became clear in the course of the Expert Meeting that indigenous peoples' representatives from throughout the world had clear recommendations and perspectives on the potential future form of any international arrangement on forests. The present paper summarizes those recommendations as a guide for the States participating in the United Nations Forum on Forests in their deliberations on the future arrangement(s) on forests.

II. Indigenous assessment of the implementation of relevant proposals for action

5. In the IPF/IFF proposals for action, there are three key areas that are of central relevance to indigenous peoples: (a) those related to traditional forest-related knowledge; (b) those related to land and resource rights of indigenous peoples; and (c) those related to participation of indigenous and other forest dependent peoples in national legislation and forest plans. These proposals for action total some 21 proposals directly relevant to traditional forest-related knowledge; a further 7 regarding the importance of full and effective participation of indigenous peoples and other forest dependent peoples; and 9 regarding land and resource rights.

6. The proposals for action represent the interests of a wide range of actors in forest policy, inclusive of State interests, business and industry, the scientific community and others. The proposals of key interest to indigenous peoples call for, among other things:

- Mechanisms that provide opportunities for the participation of indigenous people in the design of national forest programmes and policies;
- Respect for the customary and traditional rights of "indigenous people and local communities" and secure land tenure arrangements;
- Recognition of the important role of the traditional forest-related knowledge of indigenous people;
- Implementation of article 8 (j) of the Convention on Biological Diversity;
- Recognition and support for traditional resource use systems incorporating traditional forest-related knowledge, including new instruments and mechanisms to enhance the security of forest-dependent groups;
- Social mapping techniques in collaboration with indigenous people to assist in forest management planning;
- Participatory research with indigenous people to develop resource management approaches to reduce pressure on forests;
- Mechanisms to involve indigenous people in the regeneration and restoration of degraded forests and in their protection and management;
- Actions to ensure that trade policies take into account community rights;

- Steps to ensure equal opportunities for women, in particular indigenous women and women in rural areas, to benefit from forestry operations;

- National policies to address the underlying causes of deforestation and forest degradation.[2]

7. Thus the proposals for action represent an important call for increased recognition of indigenous peoples and involvement of indigenous peoples in the formulation of the forest strategies and policies which impact directly on their lives. However, it is of great concern to indigenous peoples that the implementation of these important aspects of the proposals for action has lagged behind practice in other forums. The focus on involvement of indigenous peoples in the United Nations Forum on Forests itself has remained at the national level and has been dominated by a view of indigenous peoples as one of many stakeholder groups, rather than as rights holders and owners of the forest biodiversity being discussed.

8. The review and evaluation of the implementation of proposals for action relevant to indigenous peoples on a national and regional level that is presented here was conducted through a range of case studies, and supplemented by analysis and discussion during the Expert Meeting. The case studies consist of three regional reports (Americas, Eurasia/Pacific and Africa) and 12 different country case studies, namely, for the Democratic Republic of the Congo, India, Kenya, Nepal, Panama, Papua New Guinea, Peru, the Philippines, Rwanda, the Russian Federation, Thailand and Venezuela. The main aims of the case studies were:

(a) To examine progress in implementation of international commitments at the national and local levels. These include the relevant proposals for action agreed through the IPF/IFF and United Nations Forum on Forests processes; commitments agreed under the Convention on Biological Diversity, including articles 8 (j) and 10 (c); the programme of work on protected areas; the programme of work on article 8 (j) and related provisions; and the expanded programme of work on forest biological diversity (Conference of the Parties decision VI/22);

(b) To establish clear examples of the challenges faced by Governments, indigenous peoples, local communities and international forest-related agencies in different contexts;

(c) To identify specific successes and best practice cases.

9. This approach was taken to ensure that the work of the United Nations Forum on Forests is not considered in isolation, but rather, in partnership with other existing international mechanisms and processes with similar objectives, and to ensure that best practice in one forum could be replicated in others.

10. Assessment of the efficacy of the implementation of existing proposals for action relevant to indigenous peoples is complex, owing to the global spread of indigenous peoples' communities, territories and resources. The case studies reflect this diversity and we would encourage Governments to access the full case study documents.[3] Here we will be presenting only the general overview as revealed in the case studies and regional overviews, combined with opinions and experience shared by participants in the Expert Meeting. There are four key areas of government commitments, as follows:

- Reporting and establishment of national forest plans/national forest action programmes and national biodiversity strategy and action plans

- Land and resource rights and recognition of traditional forest-related knowledge
- Documentation of traditional forest-related knowledge, benefit sharing and free prior and informed consent
- Indigenous participation in policy formulation and implementation.

Reporting and establishment of national forest plans/national forest action programmes and national biodiversity strategy and action plans

11. Reporting to the United Nations Forum on Forests was generally weak, with slightly stronger reporting into the Convention on Biological Diversity. It was particularly notable that in the majority of countries there was a lack of civil society participation in the writing of such reports, and the quality of reporting varied widely between countries.[4] In reports that were submitted, there was some treatment of traditional forest-related knowledge. However, in general, the quality and infrequency of reporting from some countries underlines the need to improve mechanisms to monitor implementation of the IPF/IFF proposals on traditional forest-related knowledge.

12. With regard to the establishment of the required broad policy frameworks, the majority of countries covered in the case studies have produced national biodiversity strategy and action plans and national forest action programmes/ national forest plans, which provide major frameworks for implementation of the Convention on Biological Diversity and the IPF/IFF proposals for action, respectively. The guidelines for national forest plans include recognition and respect for customary and traditional rights of, inter alia, indigenous people, local communities, forest dwellers and forest owners. Actual recognition and respect is less apparent, however, and distinct regional differences emerge between the continents covered in the regional overview studies.

Land and resource rights and recognition of traditional forest-related knowledge

13. A prior requirement for the recognition of land and resource rights, and of traditional forest-related knowledge, is the recognition of the existence of indigenous peoples. Levels of recognition accorded by Governments vary sharply around the globe and within regions. The issues of recognition of indigenous peoples, and the attendant recognition of land and resource rights, and of traditional forest-related knowledge will be dealt with regionally below.

14. In Central Africa, none of the national case study countries and only Cameroon, among the eight countries highlighted in the regional study, recognizes the existence of indigenous peoples, with others referring to "local communities" or "traditional communities". Within this view of local and traditional communities, there is recognition of traditional knowledge as having relevance in forested lands, but "less as a reason for handing over forest management to those who possess that knowledge, than as a useful commodity for forest and biodiversity planners to use in implementation of their policies and programmes."[5] It is viewed as a potential commodity and as a useful tool in sustainable forest management, which is able to be accessed and dealt with separately from the issue of the rights of knowledge holders. None of the three African countries featured in the national case studies has taken legal measures specifically to protect indigenous land and resource rights, nor

attendant traditional knowledge. Rwanda's land legislation was recently revised, but without any specific measures to address the landlessness of the Batwa. Batwa, in particular, are disenfranchised and discriminated against; neither State law nor customary law of the dominant farming society recognizes their right to lands. In Rwanda, it has been politically dangerous for the Batwa to assert their indigenous identity and rights.

15. Positive developments in Africa indicating movement towards recognition of land tenure and traditional forest-related knowledge include the Ugandan land legislation of 1998, which recognizes collective rights over customary lands[6] and the commitment in Cameroon's Indigenous Peoples Development Plan — the first of its kind in Africa — to ensure legal recognition for all indigenous communities. In addition, new forest laws in Cameroon, the Democratic Republic of the Congo and Gabon give some rights to "local communities" to manage areas as community forests.

16. In the three Latin American cases studied, there is recognition of the existence of indigenous peoples as peoples with distinctive rights and roles in society. Panama, Peru and Venezuela have all given legal recognition to indigenous peoples and have also ratified to International Labour Organization (ILO) Convention No. 169. There are also specific legal and policy measures in each country giving land and resource rights to indigenous peoples, and in all three countries there is at least partial recognition of traditional forest-related knowledge in the broad sense. However, land and resource rights, as well as recognition of autonomy and traditional institutions, vary in their scope and degree of security. In Panama, 20 per cent of the national area is demarcated as indigenous Comarcas, although these do not confer autonomy and are still subject to government authorization for commercial exploitation. Similarly, in Peru, there are restrictions on autonomy and use of forests in both titled native communities and communal reserves. Moreover, in both Panama and Peru, titling of indigenous lands involves the creation of new structures of authority, which may undermine the traditional authorities. The situation in Venezuela has changed radically under the Government of Hugo Chavez; indigenous peoples and their rights to ancestral lands are now recognized in law, and demarcation of indigenous areas is currently being undertaken jointly by government and indigenous organizations.

17. In practice, conflicts with other forms of land use continue to undermine indigenous rights in Latin America. This is most acute in Peru, where a major policy initiative for commercial exploitation of forests is driving the privatization of over 24 million hectares of Amazonian forests through the public auctioning of large (over 50,000 ha) concessions. Areas were allocated for concessions without reference to accurate maps of existing native communities and proposed communal reserves and there are many overlaps with indigenous lands.

18. In the Asia-Pacific case studies, only the Philippines and Papua New Guinea fully recognize indigenous peoples and their rights. Nepal does recognize some ethnic groups as indigenous, but does not recognize rights on this basis. The national and regional case studies from Asia emphasize that customary systems of land tenure and forest management have largely been displaced by colonial expansion and more recent forest and land policies, and in many countries this has still not been rectified. The regional Asia case study documents demands by indigenous peoples for recognition of customary systems. For example, in

Indonesia, indigenous organizations have called for equal status for customary (adat) and State law within traditional areas. Adat is upheld in Malaysian law, but often not respected in practice.

19. The case study countries in South Asia (India Nepal, Thailand) have no specific measures on indigenous land tenure, although in India, there are "Scheduled Areas" for some tribal peoples and India's draft national biodiversity strategy and action plan includes measures on land tenure of forest-dependent communities and the rights of tribals. Nepal's report to the third session of the United Nations Forum on Forests states that usufruct rights for basic livelihoods are recognized for forest users; however, usufruct rights are often not recognized for landless forest peoples and seasonal and remote users, or are overridden by displacement by urbanization. In all three countries, there has been widespread displacement and eviction of indigenous peoples — still continuing in Nepal and Thailand — from areas designated for forest production or as protected areas. In the Philippines, the Indigenous Peoples' Rights Act (1997) specifies: communal rights (but not co-ownership) to ancestral lands and domains; rights to self-governance, empowerment, social justice and cultural integrity; the application of customary laws and practices; protection of indigenous culture, traditions and institutions; rights to indigenous knowledge systems and practices; and the right of indigenous peoples to develop their own sciences and technologies. However, there are contradictions between these provisions and the land and forestry laws.

20. With regard to the recognition of traditional forest-related knowledge, the regional Asia case study demonstrates that such recognition concentrates on a narrow definition that can be harnessed to goals of bioprospecting and commercial exploitation. This is particularly clear for India and Thailand, which recognize traditional forest-related knowledge but not indigenous peoples. Overall, traditional forest-related knowledge in forest management is not recognized on an equal footing with "scientific" forest knowledge.

21. In Papua New Guinea, customary land tenure is recognized by the Forestry Act and treated as part of the national legal framework, enforceable by the law courts. The Government recognizes that an impressive 97 per cent of the national territory is owned by local landowners according to customary law. Specifically, the Forestry Act (1991) recognizes customary landowner rights to ownership of land and forest produce and rights to use of the land. It also recognizes the need for prior informed consent for development (although enforcement in some areas has been poor).

22. The Russian Federation also recognizes indigenous peoples, but rights are largely conditional on maintenance of traditional lifestyles. Indigenous peoples who maintain traditional lifestyles can gain land and resource rights through the creation of territories for traditional use of nature. Such territories are protected areas where indigenous peoples have legal rights to ownership and maintenance of traditional use of land, rights to common mineral resources and priority for use of wildlife. However, rights are conditional on traditional practices. "Traditional use of nature" is defined as "historically developed methods of traditional use of nature based on a long-term balanced use of renewable natural resources ensuring natural resource reproduction and conservation of biological diversity", and thus territories for traditional use of nature implicitly recognize the value of traditional forest-related knowledge systems as forest management systems. Again, however, the legal framework for territories for traditional use of nature is contradictory and none has

yet been created. More widely, the fundamentals of forest ownership are not clear. Any new forest owner has the right to restrict or forbid indigenous peoples from using resources in their area. An interim report to the Convention on Biological Diversity on the Russia Federation's forest biodiversity emphasized the crucial role of traditional forest-related knowledge in forest protection by indigenous peoples, but recognized that no special measures existed to protect such knowledge.

23. In the case studies and in discussions during the Expert Meeting, attention focused on identifying the major obstacles and constraints to improved implementation of the proposals for action of relevance to indigenous peoples. The conclusions are that for the proposals for action related to rights to land and resources, the key obstacles are:

- Lack of recognition of indigenous peoples, inadequate land and resource rights on national level;
- Land conflicts with protected areas, land conflicts with logging and production forests;
- Centralized forest policies that are driven by production.

24. Obstacles to recognition of customary systems of tenure and traditional authorities include a lack of recognition of traditional forest-related knowledge systems, including customary tenure and authorities and a weakening of traditional institutional structures through the imposition of new structures.

Documentation of traditional forest-related knowledge, benefit sharing and free prior and informed consent

25. Of the three Latin American case study countries, only Peru has developed specific laws on documentation of traditional forest-related knowledge. However, both the Regime for the protection of collective indigenous knowledge related to biological resources (Law 27811, 2002) and the Law for the protection of access to Peruvian biological diversity and collective indigenous knowledge (Law 28216, 2004) put a much stronger emphasis on commercial aspects, such as granting of patents and licences, than on protection of the rights of knowledge-holders. Moreover, legal protection only applies to knowledge registered in a confidential national register, to which indigenous organizations would have no access. There is concern that the Government of Peru does not have the capacity to guarantee the security of this information and there have already been several cases of biopiracy in Peru which the Government has done little to address. In the case study, Roberto Espinoza suggests that a more appropriate strategy would be first to halt biopiracy, and then to develop a sui generis regime based on the principles of interculturality, sustainability and social equity.

26. In the Africa region, the development of the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (2000) is a significant step. However practical legal and policy measures on the protection of traditional forest-related knowledge and indigenous peoples' rights to their intellectual property are limited in much of Central Africa. There are some promising non-governmental initiatives for participatory documentation of traditional forest-related knowledge which have emerged in Central Africa recently. The only national biodiversity strategy and action plan to uphold the principle of prior informed consent is that of the Central

African Republic. African regional initiatives include the New Partnership for Africa's Development[7] and the Africa Forest Law Enforcement and Governance process, which is committed to take measures to ensure that property and usufruct rights, including traditional forest-related knowledge, are fully respected.

27. For the Asian region, "the general trend in Asia is towards the commercialization of genetic resources and the expansion of intellectual property rights over traditional knowledge". Relevant laws are listed from 19 different countries in the full study, available on request.[8] Documentation of traditional forest-related knowledge in electronic form is growing at both the national and regional levels.

Indigenous participation in policy formulation and implementation

28. The level and efficacy of indigenous participation in policy formulation and implementation is generally reported to be poor. Factors contributing to this include: the lack of effective mechanisms for participation and access to policy forums; lack of awareness of international commitments, both among indigenous peoples (except for a minority who work in leading indigenous organizations) and among government officials; and lack of organizational capacity and initiative of indigenous peoples. Where indigenous individuals do participate in international forums, there are often issues concerning their mandate and representatives of the indigenous population of their country. Directly relevant to the proposals for action concerning participation of indigenous peoples in policy formulation and implementation are the lack of mechanisms for participation on the national level, lack of information provision both to government officials and to indigenous communities about existing commitments, lack of organizational capacity on behalf of responsible government agencies, and in some countries obstructive or insensitive government policies.

29. Other factors which act as obstacles to better implementation of the proposals for action include, for many countries in Asia and Africa, financial constraints, gaps between the national policies and the real practice, lack of awareness among responsible government officials, lack of harmonization between different laws and insurgency or civil unrest.

III. Gaps in the existing proposals for action

30. The existing proposals for action as produced in the IPF/IFF process are comprehensive and detailed, and represent an impressive consensus on appropriate ways to coordinate globally forest policy on national levels. From the perspective of indigenous peoples, however, there are some serious gaps in the proposals for action, which are of significant concern. In particular, it is acknowledged by many in the international community that access to resources and control over the management of resources are preconditions to the enjoyment of basic human rights, the right to subsistence, the right to food security and many others. However, the existing proposals for action lack reference to or compliance with the key human rights instruments in the international system. Given the centrality of land and resource tenure to the continuation of indigenous peoples' cultures, traditions and lives, the lack of specific reference to human rights in any discussion of a

framework for managing the resources on which indigenous peoples depend is worrying.

31. Related to this is the lack of clear discussion about relocation of communities and peoples from forested areas — an act we consider to be in gross violation of human rights and indigenous rights if not carried out under the principle of free prior informed consent. Indeed, free prior informed consent is not supported or mentioned in the proposals for action in relation to land or resource ownership and access, although it is a principle that indigenous peoples have consistently called for and is recognized under ILO Convention No. 169 and included in recommendation 23 of the Committee on the Elimination of Racial Discrimination on indigenous peoples (1997). The principle of free prior and informed consent is referenced in regard to the use of traditional forest-related knowledge but not in regard to management policies over resources or authority over traditional lands.

32. Finally, there seems to be a lack of consensus among Governments on traditional forest-related knowledge. This can be clearly illustrated by the fourth session of the United Nations Forum on Forests. Governments' polarized positions on this topic highlighted the fact that the development of an effective and participatory international arrangement on forests will require that Governments be informed and flexible, and that without the genuine participation of civil society groups with an understanding of and interest in the issues at stake, deliberations may simply break down and important topics left unaddressed, owing to their difficult nature. In addition, the difficulties surrounding the discussions of access to and use of traditional knowledge at the fourth session of the Forum, highlighted the problems in addressing this topic at the international level.[9]

IV. Priority areas for action

33. In the recommendations that emerged from the Expert Meeting on Traditional Forest-Related Knowledge and the Implementation of Related International Commitments, there were a number of very strong thematic recommendations which tie directly into the proposals for action already before the United Nations Forum on Forests and collaborating States. One of the areas in which the proposals for action are strongest from the perspective of indigenous peoples is the numerous times in which countries are encouraged to support and promote the participation of indigenous peoples in national level processes of forest management and forest policy development. Indicative of these is the following where the IPF:

> "Encouraged countries to elaborate systems, including private and community forest management systems, for planning, implementing, monitoring and evaluating national forest programmes that identify and involve, where appropriate, a broad participation of indigenous people, forest dwellers, forest owners and local communities in meaningful decision-making regarding the management of State forest lands in their proximity, within the context of national laws and legislation".[10]

34. However, the involvement of indigenous peoples at the national level was also identified by the Expert Meeting participants as the most serious weakness of current approaches to sustainable management of forested lands. In the full Corobici recommendations, the following statement was provided to national Governments to

address the lack of space for real participation — the exact participation that the proposals for action call for:

> Recognizing that the protection and promotion of the traditional forest-related knowledge of indigenous peoples is inextricably linked with their full cultural and intellectual heritage, secure rights to their lands, territories and the natural resources therein and with their spirituality and customary law,
>
> Considering that indigenous peoples' rights are the foundation of their future development, and that many indigenous peoples traditionally and currently depend on forests, and that indigenous peoples' rights must be recognized in forest policies,
>
> Asserting that sustainable forest management cannot be achieved without the protection of indigenous peoples' rights,
>
> We provide the following recommendations:
>
> National Governments and States should, with full and effective participation of indigenous peoples:
>
> 1. Undertake constitutional reforms that recognize the existence and identities of indigenous peoples in their countries, through plural legal regimes and by ensuring their prominence in national law;
>
> 2. Ratify International Labour Convention No. 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries, where indigenous peoples so demand;
>
> 3. Support the adoption of the United Nations draft declaration on the rights of indigenous peoples;
>
> 4. Review national constitutions, laws and policies to harmonize them with applicable international laws and agreements concerning the rights of indigenous peoples;
>
> 5. Repeal exclusionary forest and conservation laws, policies and associated norms, codes and legislation that criminalize the customary resource use practices and traditional livelihood activities;
>
> 6. Reform national forest and conservation policies, laws, institutions and land tenure regimes to recognize indigenous peoples' unambiguous and secure rights to collectively own, manage, and control their territories, forests and other natural resources, taking into account their traditional lifestyles and customary systems of tenure, especially those relevant to traditional knowledge;
>
> 7. Repeal all assimilationist development laws and policies, since they devalue and undermine indigenous knowledge, including traditional forest-related knowledge;
>
> 8. Adopt laws and programmes that eliminate and penalize all forms of discrimination, intolerance and social exclusion, and ratify and implement the Convention on the Elimination of All Forms of Discrimination;

35. In addition, clear recommendations were provided concerning positive action to ensure strong future participation:

> 39. At the national level, Governments should address indigenous peoples' issues within their national forest programmes and national biodiversity action plans, and parks and protected areas strategies, and strengthen indigenous peoples' participation in national planning, implementation and reporting. In addition, consultation should be done with respect to appropriate indigenous peoples' structures, with mechanisms for documentation and disclosure.
>
> 49. Any international arrangement on forests should adopt the best practices of other United Nations bodies (such as Convention on Biological Diversity in its work on article 8 (j)/WGIP/UNPFII) concerning the full and effective participation of indigenous peoples. Any international arrangement on forests should adopt such mechanisms of participation.
>
> 50. The United Nations Forum on Forests, and any subsequent international arrangement on forests, should recognize indigenous peoples as distinct peoples and grant them increased and differentiated participation consistent with emerging trends in the United Nations system.

36. On a national level, the proposals for action also echo the calls of indigenous peoples for recognition of secure land tenure arrangements. Indigenous peoples have called consistently in all international forums and at the national level for recognition of their rights to traditional lands and territories. In the words of Gilberto Arias, First Kuna Cacique:

> "The forest is our life and our existence. In the forest we find our food, our medicines, our housing and our knowledge. How can they think that we, the indigenous people, could destroy our life, destroying forests? We have used the forests for a truly sustainable development, only taking what we needed."

37. The proposals for action produced go some way towards answering this call, as illustrated in the following proposals for action:

> "Encouraged countries, in accordance with their national sovereignty ... to develop, implement, monitor and evaluate national forest programmes, which include a wide range of approaches for sustainable forest management, taking into consideration the following: ... recognition and respect for customary and traditional rights of, inter alia, indigenous people and local communities; **secure land tenure arrangements**; holistic intersectoral and iterative approaches; ecosystem approaches that integrate the conservation of biological diversity and the sustainable use of biological resources" (emphasis added)[11]
>
> "Invited countries ... to use national forest programmes ... to involve indigenous and local communities and women to participate in the formulation

and implementation of measures that aim to protect their rights and privileges in relation to forest lands, traditional forest-related knowledge and forest biological resources" (as defined by the Convention on Biological Diversity)[12]

"Encouraged countries, within their respective legal frameworks ... to support land tenure policies that recognize and respect legitimate access and use, and property rights in order to support sustainable forest management and investment, recognizing that institutionalizing tenure is a long-term and complex process which requires interim measures to address urgent needs, in particular of local and/or indigenous communities".[13]

38. However, the proposals for action do not draw the link between land tenure and resource security on the one hand, and the realization of basic human rights to subsistence and to livelihoods on the other. The establishment of secure and just land tenure is a matter of human rights, and as such is a commitment that all Governments have as signatories to the key international human rights instruments. Such instruments and the rights that they detail and protect elaborate commitments on the side of Governments to align national legislation with these "higher order" commitments to protect basic human rights. As such, national legislation must be brought into line with the requirements of human rights treaties, rather than land tenure arrangements being established without reference to such commitments. This silence on the issue of human rights and the basic needs of indigenous peoples and local communities is a constant throughout the proposals for action, a serious gap considering the fact that these proposals deal with the means of subsistence and livelihoods of hundreds of peoples, and millions of communities.

39. In addition to the national level involvement of indigenous peoples in the management of their territories and resources, there also exist priority areas for action within the working methods of the United Nations Forum on Forests itself. We would like to draw attention specifically to the need to align the work of the various agencies working on issues of traditional forest-related knowledge, inter-agency collaboration of the sort called for within the proposals for action from both IPF and IFF exist:

"Invited countries and relevant international organizations, especially the Conference of the Parties to the Convention [on Biological Diversity], to collaborate with indigenous people and forest dependent people who possess traditional forest-related knowledge ... to identify, respect, preserve and maintain traditional forest-related knowledge, including innovations and practices that are relevant for the conservation of forest biological diversity and the sustainable use of forest biological resources"[14]

"Invited the World Intellectual Property Organization, together with the United Nations Conference on Trade and Development ... to develop ways and means to promote effective protection of traditional forest-related knowledge, in particular against illegal international trafficking, and also to promote the fair and equitable sharing of benefits arising from such knowledge"[15]

"Invited the Conference of the Parties to the Convention on Biological Diversity, with the participation of indigenous people and local communities, through the Ad Hoc Open-ended Intersessional Working Group, in its programme of work ... to include options for collecting, recording, applying and locating traditional forest-related knowledge, recognizing the need to

foster the wider application of such knowledge, innovations and practices, with approval and effective involvement of the holders throughout the process".[16]

40. These are not the only proposals for action calling for such collaboration, but they are illustrative of the commitment of the United Nations Forum on Forests to such an inter-agency approach. Indigenous peoples in the Expert Meeting reiterated this need, calling specifically for:

> 41. The Convention on Biological Diversity, and any future international arrangement on forests, must increase and accelerate work on mainstreaming indigenous peoples' issues, as cross-cutting issues, across all of the thematic and other areas of the Convention.
>
> 42. The United Nations Permanent Forum on Indigenous Issues should provide greater coordination and guidance and make recommendations to the United Nations Forum on Forests, governing bodies of the Collaborative Partnership on Forests member organizations, including the Convention on Biological Diversity, in their work relevant to indigenous peoples.
>
> 43. The Permanent Forum should create a task force on traditional knowledge, bringing together all the United Nations agencies working on traditional knowledge to ensure a broad and effective holistic approach to the protection of traditional knowledge and related natural resources.
>
> 44. Now that it exists with a mandate relevant to the United Nations Forum on Forests, the Permanent Forum should become a member of the Collaborative Partnership on Forests.

41. The availability of the United Nations Permanent Forum on Indigenous Issues to provide the collaborative approach required to ensure there is no duplication and that work progressing in one forum is advanced and adopted in others should be recognized by the United Nations Forum on Forests.

42. With regard to intellectual property rights and the protection of traditional forest-related knowledge through sui generis systems of knowledge access and use, the proposals for action recognize such sui generis systems in the IFF proposal for action which:

> "Called upon countries to implement effective measures to recognize, respect, protect and maintain traditional forest-related knowledge in sustainable forest management, including forest biological resources (as defined by the Convention on Biological Diversity) within their intellectual property rights, sui generis or other relevant systems for protection, as appropriate, taking into account the relevant work being advanced by the Convention on Biological Diversity and other relevant international agreements".[17]

43. Initiatives exist in which indigenous peoples are researching and developing possible structures and forms for such sui generis systems and full support should be

provided to these initiatives by the United Nations Forum on Forests. This support could take a variety of forms, as stated in the following Corobici recommendations:

> 31. Take adequate measures to help preserve and protect the traditional forest-related knowledge of indigenous peoples, with the free, prior and informed consent of the indigenous peoples concerned.
>
> 32. Liaise with indigenous peoples to establish a process for the documentation of traditional forest-related knowledge with the free prior and informed consent of indigenous peoples.
>
> 33. Recognize that the knowledge so documented continues to be the property of the indigenous peoples in question, and that it cannot be used in any manner without their free prior informed consent, through the establishment, in a fully participatory manner, of appropriate laws and policies.
>
> 34. Ensure that indigenous peoples receive the benefits from any use of this knowledge, through the establishment, in a fully participatory manner, of appropriate laws and policies.
>
> 35. All international processes dealing with forest issues (including the United Nations Forum on Forests and the Convention on Biological Diversity), as well as all international forest-related agencies (including members of the Collaborative Partnership on Forests) should apply an integrated and rights-based approach in all policy discussions, initiatives, projects or programmes that directly or indirectly deal with or relate to traditional knowledge.
>
> 36. Ensure that agro-forestry technologies drawing upon traditional forest-related knowledge, such as "Taungya", clearly acknowledge the origins of this knowledge and only apply it with the free, prior and informed consent of its original custodians.[18]

44. With regard to capacity-building, a recommendation emphasized in the African and Asian regional discussions, the proposal for action already part of the Government consensus states that the Intergovernmental Panel on Forests:

> "Urged countries to work with communities and build on their knowledge to establish stronger linkages between traditional and emerging national sustainable forest management systems".[19]

45. Yet this was one of the key weaknesses highlighted in the discussions in the Expert Meeting and must be considered a priority area of activity in the future. It can be achieved by taking into consideration the education-related recommendations of the Expert Meeting which state:

9. Develop primary and secondary school curricula to reflect the perspectives of, and be relevant to, indigenous systems of knowledge.

10. Implement affirmative action regarding the provision of education to indigenous girls and boys, such as free education.

11. Provide the required technical services and political and moral support necessary for the recognition, creation, and functioning of future indigenous universities, where indigenous peoples so demand.

12. Ensure that in schools and universities where forestry and related studies are taught current curricula for courses and degrees are expanded to include both traditional forest-related knowledge and the rights of indigenous peoples.

13. Initiate deliberate action to provide indigenous women with the necessary capacity to participate fully in all strategies of natural resource management, and to share their knowledge of traditional natural resource management practices.[18]

V. Indigenous priorities for any future arrangement(s) on forests

46. The priority areas for action outlined above are, from the perspective of the Expert Meeting, essential components of any future arrangement on forests. Recognition of land tenure, recognition of traditional forest related knowledge and the rights of knowledge holders, support of sui generis systems to protect such knowledge, capacity-building of indigenous communities and of government officials and effective coordination between international agencies working on the same issues are required for any future arrangement on forests which is to have the voluntary participation and support of the world's indigenous peoples. In addition to these priority areas, there are also a number of key foundational principles which we see as being essential in a future arrangement on forests, if it is to have full and effective participation by indigenous peoples.

47. The first is that any future arrangement on forests must recognize the unique role of indigenous peoples, as distinct from other sectors of civil society, as rights holders rather than stakeholders. This entails ensuring that international best practice on ensuring the participation of indigenous peoples as direct participants in negotiations rather than simply partners in implementation is incorporated into the rules of procedure and structures of any arrangement.

48. Closely tied with this is the prerequisite that any international arrangement on forests should recognize that it is bound by the international human rights instruments to which all States are parties. This means that the basic rights outlined in the three key human rights documents, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Social, Cultural and Economic Rights, must be the foundation for all and any work in an international arrangement on forests. For indigenous peoples, rights to subsistence, rights to food security and rights to livelihood are all intimately bound to the resources on which they depend, and thus

forest resources and management of them must, for indigenous peoples, be consistent with basic human rights standards.

49. With regard to more specific recommendations for any future arrangement on forests, there are problems with the current structure which should be addressed in any new structure or arrangement(s). The existing international arrangement on forests contains within it a clear marginalization of the only global body that is placed to monitor the impact of international agreements on indigenous peoples — the United Nations Permanent Forum on Indigenous Issues. This body has been mandated by the General Assembly to coordinate across United Nations bodies work relevant to and impacting on the lives and cultures of indigenous peoples. Nothing is more central for indigenous peoples than access to resources, territories and land. Yet the international arrangement on forests as it stands at the moment provides the United Nations Permanent Forum on Indigenous Issues with only membership of a wider "Collaborative Partnership on Forests network", a body intended to promote major group participation.

50. In order for indigenous peoples' priorities and concerns to be met in ways appropriate to the serious nature of these concerns and the centrality of these concerns to the continuing existence of indigenous peoples, it is necessary for representative bodies of indigenous peoples to be involved in these decision-making, standard-setting and implementing activities. The Collaborative Partnership on Forests is mandated to assist the United Nations Forum on Forests in promoting implementation of the proposals for action, to strengthen political commitment, enhance cooperation and coordination among its members, facilitate the implementation of proposals for action specific to each member's area of expertise and to assist in monitoring and reporting on progress in implementing them. Proposals for action of most relevance to indigenous peoples — those regarding traditional forest-related knowledge — are mandated to the Convention on Biological Diversity, and those concerning the social and cultural aspects of forests, to the World Bank, with other members of the Collaborative Partnership on Forests being asked to provide support. While recognizing the progress made under the Convention, the wider mandating of these proposals for action to agencies with no representation of the peoples most directly impacted is a serious flaw in the current arrangement. A future arrangement or arrangements on forests should closely involve the Permanent Forum on Indigenous Issues to enable it to fulfil its role as a coordinating body for United Nations work involving or impacting on indigenous peoples.

VI. Recommendations on achievable goals and targets

51. The key achievable goals and targets which should be incorporated into any future arrangement(s) on forests are:

- The United Nations Forum on Forests should recommend and support the establishment of a task force on traditional knowledge under the United Nations Permanent Forum on Indigenous Issues bringing together all the United Nations agencies working on traditional knowledge to ensure a broad and effective holistic approach to the protection of traditional knowledge and related natural resources.

- Full and effective participation of indigenous peoples, according to best practice, at all levels. On an international level the best practice case of the Convention on Biological Diversity process should be held as a goal in the participation of indigenous peoples. At the regional level, all and any forest policy formulation should have participation by regional, indigenous peoples' networks and organizations.

- The United Nations Forum on Forests should provide support for the self-development of sui generis systems for the protection and appropriate use and sharing of indigenous and traditional knowledge.

- Any future international arrangement(s) on forests should focus on monitoring, assessment and reporting on implementation of IPF/IFF proposals for action. Such monitoring and assessment systems should provide the financial resources for third-party assessments and peer reviews and independent evaluations of these processes should be emphasized.

    - The United Nations Forum on Forests secretariat should redraft guidelines for national reporting to ensure that it embraces a broader set of issues relevant to indigenous issues and traditional forest-related knowledge.

    - The Convention on Biological Diversity, the United Nations Forum on Forests and their member States should strengthen national reports by including, in an equitable way, the perspectives of indigenous peoples, and by providing equitable funding and resources for indigenous peoples to submit parallel reports to complement and enrich the national reporting process to the Convention on Biological Diversity and the United Nations Forum on Forests.

    - National reports to the Convention on Biological Diversity and the United Nations Forum on Forests should identify who (in terms of indigenous peoples) has been consulted through what indigenous peoples' structures or organizations and indigenous peoples' communities should be aware of the process and structures to allow them to participate and contribute.

- Sufficient financial resources should be allocated to indigenous peoples' issues and priorities within the United Nations Forum on Forests system through the establishment of a specific standing agenda item addressing indigenous peoples' forest issues. In addition, indigenous peoples' forest issues should be addressed as cross-cutting issues throughout the United Nations Forum on Forests. The programme of work of any future arrangement should take into account the relevance of indigenous perspectives in all aspects of work.

VII. Conclusions and recommendations

52. **There have been impressive gains in the past displaying an increasingly concrete acceptance of the social, cultural and sustainability aspects of forests, and this should be applauded. The key recommendations that emerged from the Expert Meeting on Traditional Forest-Related Knowledge and the Implementation of related international agreements are detailed above. The key recommendations that the present paper would like to emphasize for discussions during the fifth session are:**

- **Participation on a national level in the formulation and implementation of national forest policies is essential.**
- **Secure land tenure and resource rights frameworks must be developed to ensure that the rights of indigenous peoples to their lands and territories are respected.**
- **Inter-agency cooperation and collaboration is essential to ensure that best practices are shared, and the involvement of the United Nations Permanent Forum on Indigenous Issues is essential to ensuring that cross-sectoral work on issues involving or impacting on indigenous peoples is coordinated.**
- **Inter-agency support should be provided to the creation of sui generis systems of knowledge protection, to ensure that work is not duplicated.**

53. **Finally the participation of indigenous peoples in any international arrangement(s) on forests is essential to the sustainable management of the forest resources being discussed. Examples exist in the international arena of the mechanisms that can be adopted to allow indigenous peoples such participation and these should be adopted and strengthened in the United Nations Forum on Forests process or any process or arrangement that replaces it**.

References

Department of Agriculture, Fisheries and Forestry. Australia (2003). Implementing the proposals for action of the Intergovernmental Panel on Forests and the Intergovernmental Forum on Forests: A tool to assist national-level assessment of progress and priorities for action toward sustainable forest management, developed in support of the United Nations Forum on Forests.

Griffiths, T. (2001). Consolidating the Gains: Indigenous peoples' rights and forest policy making at the United Nations. Moreton-in-Marsh, United Kingdom, Forest Peoples Programme Briefing paper.

International Alliance of Indigenous and Tribal Peoples of the Tropical Forests and International Work Group for Indigenous Affairs. Indigenous Peoples, Forests, and Biodiversity. EKS-Skolens Trykkeri.

International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (2004), Corobici Recommendations, Report of the Expert Meeting on

Traditional Forest-Related Knowledge and the implementation of related international commitments.

IAITPTF (2003), Implementation of International Commitments on Traditional Forest-Related Knowledge: terms of reference for the preparation of case studies.

Newing, H. (2004). A summary of case study findings on implementation of international commitments on traditional forest-related knowledge, commissioned by the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests.

Notes

[1] See www.international-alliance.org/tfrk_expert_meeting.htm.

[2] Briefing on the United Nations Forum on Forests and Collaborative Partnership on Forests, Forest Peoples Programme, December 2004.

[3] The full text of these documents is available at www.international-alliance.org/tfrk_expert_ meeting.htm.

[4] Forests and the European Union Resource Network (FERN) briefing paper for the fourth session of the United Nations Forum on Forests, on file with the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (IAITPTF).

[5] Jackson, regional Central Africa study, p. 63.

[6] Ibid., p. 25, box 7.

[7] Ibid., sect. 2.1.5.

[8] Regional initiatives include the Intellectual Property Rights Expert Group of the Asia-Pacific Economic Cooperation, the South Asia Association for Regional Cooperation, the Association of South-East Asian Nations Framework Agreement on Access to Biological and Genetic Resources and Traditional Knowledge and the Guidelines and Model Law on Access to Genetic Resources in Pacific Island Countries.

[9] Briefing note on the fourth session of the United Nations Forum on Forests by the IAITPTF, FERN and the Forest People's Programme.

[10] Intergovernmental Panel on Forests (IPF) proposal for action, E/CN.17/1997/12, para. 17 (f). See also ibid., paras. 29 (a), 40 (e), 40 (g), 89 (h) and 115 (b), and Intergovernmental Forum on Forests (IFF) proposal for action, E/CN.17/2000/14, para. 8 (b).

[11] IPF proposal for action, E/CN.17/1997/12, para. 17 (a).

[12] IFF proposal for action, E/CN.17/2000/14, para. 66.

[13] Ibid., para. 115 (d).

[14] IPF proposal for action, E/CN.17/1997/12, para. 40 (b).

[15] Ibid., para. 40 (o).

[16] IFF proposal for action, E/CN.17/2000/14, para. 75.

[17] Ibid., para. 74 (a).

[18] Corobici Recommendations, report of the Expert Meeting on Traditional Forest-Related Knowledge and the implementation of related international commitments, IAITPTF. See www.international-alliance.org/tfrk_expert_meeting.htm.

[19] IPF proposal for action, E/CN.17/1997/12, para. 40 (i).